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The following "Comments from Rural Carriers" were presented to Tom Navin, Jeremy Miller, Christine Langluis, Marcus Maher, Russell Hanser, Ian Dillner, Carol Simpson, Tim Stetzig and Gail Cohen of the Wireline Competition Bureau, and separately with Matthew Brill, Senior Legal Advisor to Commissioner Abernathy, Scott Bergman, Legal Advisor to Commissioner Adelstein and Christopher Libertelli, Senior Legal Advisor to Chairman Powell on September 16th and 17th.

Respectfully Submitted,

David A. Puskala

COMMENTS FROM RURAL CARRIERS

BACKGROUND

1. Legally, there is no reason to eliminate UNE-P or access to any UNE. In fact, the FTA explicitly states these are key mechanisms required to make local exchange competition a reality. However, the RBOC money machine is flexing its political and financial muscle in a blatant attempt to circumvent the law through rulemaking favorable to them. These actions by the RBOCs are contrary to the FTA and severely threaten the developing competitive local exchange market to the detriment of consumers and small businesses. Further, these actions directly and negatively impact the business plans of numerous upstart CLECs that entered the market under the FTA, a national law, passed by Congress. Meanwhile, the RBOC business plans for entering the mature long distance market have been able to proceed unfettered. Their unencumbered entry into the long distance market has been made possible by the fierce competition and unquestionably open market for long distance that has developed since the 1983 breakup of AT&T. Then, as now, the government needed to intervene to spur competition. AT&T was forced to do things it did not want to do, much like the RBOCs today. The government stayed the course; the result has been significant savings, innovation, and choices for the American consumer.

2. Today we are at a crossroads in the local exchange service market. The monopoly RBOCs want to rewrite the law midstream now that they have their coveted long distance approval. We ask that the government, and particularly the FCC, once again stay the course and enforce the FTA, as written, in order to allow competition to flourish for the benefit of the American consumer.

3. While we are aware that position papers are being written and presented that cover a much broader range of competitive issues, this position paper addresses the need for a Rural CLEC Exemption. Further, this paper outlines an effective method for making competition a reality in rural areas. We believe that without special rules for rural CLECs, rural America will not see the benefits of competition that urban America has seen.

RURAL CLEC EXEMPTION

4. Rural telecommunication companies generally encounter higher build out and operating costs per customer due to lack of customer density. This document outlines a proposal for an exemption or carve-out for rural companies. The core proposal maintains full access to all unbundled network elements, including UNE-P, at TELRIC prices. (Michigan actually uses a model dubbed TSLERIC and other states may use other accepted methodologies. For simplicity, I will refer to all as TELRIC.) One of the overarching goals of any exemption written into the rules will be administrative simplicity. We believe this administrative simplicity is important for two primary reasons. The first is to minimize the burden on the regulatory body overseeing the exemption. The second reason is that the rules must be clear and enforceable to minimize gamesmanship by companies attempting to utilize the exemption while not really meeting the intended criteria.

DEFINING A RURAL AREA

5. A rural area shall be defined by population density of a county. Counties with an overall population density of 80.0 people per square mile or less as of the official 2000 census will be considered rural. All cities, villages, townships and other subunits of a qualifying county will be eligible for service by a CLEC operating under the rural exemption regardless of the individual population density of a subunit. See the attached exhibit for an example of the density data we propose to use.

6. Some telephone exchanges will cross county boundaries potentially being in one county that qualifies and one that does not. We propose that if the exchange serves less than 50,000 active lines, then all customers in the exchange shall be qualified for the exemption.

COMPANY RESTRICTIONS

7. In order to operate under the Rural Exemption, a company’s entire local exchange customer base must be located in a rural area. Further any company with ownership in, or that is owned by, a company operating as a local exchange telephone carrier outside of a rural area, shall not be eligible for the exemption.

FAVORABLE WHOLESALE PRICING

8. In Michigan, the TELRIC pricing for Zone A urban areas is substantially less than Zone C rural areas. The result is that a competitive carrier operating across the state is able to use its customer base in the urban areas to subsidize its customer base in a Zone C rural area. Companies operating under the rural exemption will not have this cross subsidizing capability and will be at a significant pricing disadvantage if required to pay Zone C rates. Therefore, we recommend that rural companies receive the most favorable UNE/UNE-P pricing available in a particular market, typically the Zone A UNE TELRIC pricing for the state.

9. The RBOCs have developed two favorite methods of thwarting CLEC competition, removing eligible elements, and raising the cost of elements. Protection needs to be developed that prevents the RBOC from raising the wholesale pricing to the point of making the rural CLEC uncompetitive with the RBOCs retail pricing for similar services.

MAINTAIN ACCESS RATES AT CURRENT RURAL EXEMPTION LEVELS

10. Some Rural CLECs currently operate under the Rural Exemption allowed for in the Access Charge Reform order (CC Docket No. 96-262, Seventh Report and Order). We propose that this Rural Exemption for Access Charges remain in place. Further, we propose that the Access Charge rate for the Rural Exemption remain at the highest rate band in the NECA Access Tariff or a rate band specifically developed for rural CLECs, whichever is higher.

REQUIREMENTS SHALL TRANSFER BETWEEN CARRIERS

11. Some RBOCs are attempting to shed their rural operations and abandon rural America. We propose that the requirements of the Rural Exemption transfer along with any service territory sold. Specifically, if a service territory is sold that contains territory eligible for the Rural Exemption, the purchasing carrier must keep all elements and services and platforms available to competing carriers at the same terms and conditions the competing carriers received before the sale occurred. Further CLECs already operating in the qualifying market may choose to keep the Zone A UNE/UNE-P pricing of the original owner. Qualifying CLEC entrants after a sale will only be eligible for the current owners’ best Zone or Zone A TELRIC pricing.